

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Alex Spiro (*pro hac vice* application pending)

2 Daniel R. Koffmann (California Bar No. 344379)

3 51 Madison Ave, 22nd Floor

New York, NY 10010

4 Telephone: (212) 849-7000

Facsimile: (212) 849-7100

5 alexspiro@quinnemanuel.com

danielkoffmann@quinnemanuel.com

7 Christopher G. Michel (*pro hac vice* application pending)

Casey J. Adams (*pro hac vice* application pending)

8 Rachel G. Frank (California Bar No. 330040)

1300 I Street NW, Suite 900

9 Washington, D.C. 20005

10 Telephone: (202) 538-8000

Facsimile: (202) 538-8100

11 christophermichel@quinnemanuel.com

caseyadams@quinnemanuel.com

12 rachelfrank@quinnemanuel.com

14 *Attorneys for X Corp.,*

successor in interest to Defendant Twitter, Inc.

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

19 United States of America,

20 Plaintiff,

21 vs.

22 Twitter, Inc.,

23 Defendant.

Case No. 3:22-cv-03070-TSH

**X CORP.'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
CERTAIN DOCUMENTS IN SUPPORT
OF X CORP.'S MOTION FOR
PROTECTIVE ORDER & RELIEF
FROM CONSENT ORDER**

The Hon. Thomas S. Hixson

Pursuant to Civil Local Rules 7-11 and 79-5, X Corp., successor in interest to Defendant Twitter, Inc., respectfully moves the Court to seal certain exhibits to the Declaration of Daniel R. Koffmann in Support of X Corp.’s Motion for Protective Order and Relief from Consent Order (the “Koffmann Declaration”). Specifically, X Corp. requests that the following exhibits be sealed:

- Ex 2: Ernst & Young Statement of Work
- Ex 15: Roque Deposition Ex. 008 (Email from Paul A. Perner to David Roque dated February 21, 2023)
- Ex 16: Roque Deposition Ex. 009 (Chat messages between Paul A. Perner and David Roque dated February 21, 2023)
- Ex 17: Roque Deposition Ex. 005 (Email from David Roque to Paul A. Perner dated February 14, 2023)

X Corp. seeks to seal these exhibits to the Koffmann Declaration because they reflect non-public information that is sealable for the reasons stated herein.

In determining whether to permit documents to be filed under seal, courts in the Ninth Circuit apply two separate standards: (1) the “compelling reason” test for sealing information in connection with motions for a determination on the merits of a claim or defense; and (2) the less-restrictive “good cause” test for sealing information in connection with non-dispositive filings. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006); *Center for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092 (9th Cir. 2016). Here, the compelling reason test applies because X Corp.’s Motion for Protective Order and Relief from Consent Order may be dispositive. Compelling reasons exist when “such court files might [] become a vehicle for improper purposes, such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Center for Auto Safety*, 809 F.3d. at 1097 (internal quotations and citations omitted).

X Corp.’s request to seal is narrowly tailored to a limited number exhibits that legitimate public and private interests warrant sealing. Public disclosure of these materials would harm the legitimate interests of third party Ernst & Young, LLP (“EY”) by revealing nonpublic business

1 information about its operations and engagements that could be used by competitors to gain an
2 advantage. “As the Ninth Circuit has explained, ‘business information that might harm a litigant’s
3 competitive standing [if disclosed]’ meets the compelling reasons standard for sealing.” *Williams v.*
4 *Apple, Inc.*, No. 19-CV-04700-LHK, 2021 WL 2476916, at *2 (N.D. Cal. June 17, 2021) (quoting *In*
5 *re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008); *see also Kamakana*, 447 F.3d at 1179. A
6 less restrictive alternative to sealing is not sufficient because the threat of competitive harm from
7 public disclosure cannot be mitigated by any less restrictive means.

8 For the foregoing reasons, X Corp. respectfully requests that the Court grant X Corp.’s
9 Administrative Motion to Seal Exhibits 2, 15, 16, and 17 to the Koffmann Declaration.

1 DATED: July 13, 2023

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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4 By /s/ Alex Spiro

5 Alex Spiro (*pro hac vice* application pending)
6 Daniel R. Koffmann (California Bar No. 344379)
7 51 Madison Ave, 22nd Floor
8 New York, NY 10010
9 Telephone: (212) 849-7000
Facsimile: (212) 849-7100
alexspiro@quinnemanuel.com
danielkoffmann@quinnemanuel.com

10 Christopher G. Michel (*pro hac vice* application
11 pending)
12 Casey J. Adams (*pro hac vice* application pending)
13 Rachel G. Frank (California Bar No. 330040)
14 1300 I Street NW, Suite 900
15 Washington, D.C. 20005
16 Telephone: (202) 538 8000
Facsimile: (202) 538 8100
christophermichel@quinnemanuel.com
caseyadams@quinnemanuel.com
rachelfrank@quinnemanuel.com

17 *Attorneys for X Corp., successor in interest to*
18 *Defendant Twitter, Inc.*